

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45

**COMMENTS****I. Introduction and Summary**

TCA, Inc. - Telecommunications Consultants ("TCA") respectfully submits its comments to the Petitions for Reconsideration and/or Clarification ("Petition") of the Report and Order (FCC 97-157) ("Order"). TCA is a consulting firm, providing service primarily to small local exchange carriers (LECs). Our clients serve primarily sparsely populated, rural territories. The cost of providing service to their customers frequently exceeds the national average cost of providing telecommunications services. However, federal universal service support mechanisms have enabled them to provide state-of-the-art telecommunications services at affordable rates. The changes to these support mechanisms mandated by the FCC seriously jeopardizes their ability to upgrade facilities necessary to provide the most current technology to their customers. Further, these changes will almost certainly lead to sizable local rate increases. Our reply comments to the numerous Petitions for Reconsideration address the concerns of our clients, who are directly impacted by the Commission's actions in this docket.

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## **II. Limiting Federal Support to 25% of Total Support Represents an Improper Shift of a Federal Responsibility to the States.**

For 60 years the Federal jurisdiction has retained the primary responsibility for promoting and maintaining universal service. The Telecommunications Act of 1996 (“Act”) did not lessen the federal role; instead, by codifying the FCC’s responsibilities, it actually strengthened the federal role.<sup>1</sup> By asserting that the Act “grants them the primary responsibility and authority to ensure that universal service mechanisms are specific, predictable and sufficient”<sup>2</sup>, the FCC directly acknowledges their responsibility. For this reason, we strongly believe that the FCC’s decision to force the states to provide 75% of the funds necessary to support universal service in high cost areas is incorrect and must be modified.

The FCC apparently considers that “believing” that the states will compensate for the reduced federal role as fulfilling their responsibility of ensuring universal service mechanisms are specific, predictable and sufficient. We respectfully disagree. As several petitioners correctly pointed out,<sup>3</sup> there is absolutely no evidence on the record to support the FCC’s “belief”. Incredibly, the FCC has made no attempt to even identify individual state support mechanisms, let alone determine whether these support mechanisms have the capability of providing 75% of the funds necessary to ensure universal service in high cost areas. Instead, the FCC offers a vague promise that these mechanisms will be monitored to determine whether additional federal support becomes

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<sup>1</sup> Section 254(b)

<sup>2</sup> *Order* at ¶ 816

<sup>3</sup> Petitions of Rural Telephone Coalition at 5, Vermont Public Service Board and Vermont Department of Public Service at 4, Rural Telephone Companies at 10.

necessary<sup>4</sup>. Unfortunately, this implies that FCC will require evidence of decreases in customer penetration rates and deficiencies in earnings levels of LECs providing service in high cost areas before taking corrective action.

Even if all fifty States develop support mechanisms to provide predictable and sufficient support, the FCC's limitation of federal support will result in the violation of the Act's requirement that consumers in all regions of the nation to have reasonably comparable rates.<sup>5</sup> High-cost geographic support areas are not evenly distributed nationwide, but instead tend to be concentrated in less populous states. As a result, requiring state funds to compensate for the federal shortfall will have a devastating impact on ratepayers in states with numerous high-cost geographic support areas and a small state revenue base to assess.<sup>6</sup> Preliminary estimates indicate ratepayers in eight states will face surcharges on state revenues in excess of twenty-five percent to compensate for the federal shortfall. This not only violates the requirements of the Act, but the public assurances of the FCC that the Universal Service Order will not increase local rates<sup>7</sup>.

Promoting universal service has always been a national goal and, appropriately the funds required to support universal service in high-cost areas have been obtained nationwide. By requiring individual states to fund the majority of universal service support, the FCC is reversing this long held

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<sup>4</sup> *Order* at ¶ 712

<sup>5</sup> Although the likelihood all fifty states developing support mechanisms which would compensate for the federal reduction in support is remote, should this occur Section 254(b)(3) would be violated.

<sup>6</sup> Petition of Vermont Public Service Board and Vermont Department of Public Service at 5 and Attachment A

<sup>7</sup> Comments of Chairman Hundt, FCC Open Meeting, May 7, 1997.

historical relationship. We concur with several petitioners that the FCC's mandate that states fund federal responsibilities is contrary to the U.S. Constitution.<sup>8</sup>

### **III. Imposing a Limitation on Corporate Operations Expense Recovery Improperly Prevents Many Rural LECs from Receiving Sufficient Support.**

The FCC cites Section 254(k) of the Act as the reason for limiting corporate expense recovery from high-cost loop support. However, this section, titled "Subsidy of Competitive Services" addresses cross-subsidy issues and has nothing to do with properly allocated Part 32 expenses. LECs are required to comply with existing FCC rules (contained Parts 36, 64 and 69) designed to prevent cross-subsidization from occurring. The FCC provides no evidence to support their implied allegation that high-cost LECs are subsidizing competitive services by recovering an excessive level of Corporate Operations expense from high cost loop support mechanisms. Instead, the FCC cites several interexchange carriers who suggest that zero common costs should be assigned to the loop.<sup>9</sup> Apparently, the FCC feels that referencing an obviously inappropriate allocation methodology makes their proposal seem "more reasonable".

The FCC has further compounded their inerrant logic by freezing the per-line amount for the transition period based upon 1995 expense levels. Inflation will increase Corporate Operations expenses above 1995 levels, precluding small LECs from recovering an appropriate level from high cost loop support. Unfortunately, implementation of the Act has caused Corporate Operations expenses to increase much faster than inflation. Monitoring and responding to the FCC's Trilogy

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<sup>8</sup> Petitions of Rural Telephone Coalition at 6, Rural Telephone Companies at 11.

<sup>9</sup> *Order* at ¶ 283

of Orders<sup>10</sup>, in addition to various state initiatives, have caused small LECs to incur sizable increases in fees from attorneys, consultants and regulatory agencies. The latest one-year FCC budget increase of 21%<sup>11</sup> is reflective of the magnitude of the increases faced by the small LECs in Corporate Operations expenses. At a minimum, the FCC should ensure that the per-line limitation accurately reflects reasonable cost levels, not outdated 1995 levels which predate the massive regulatory changes caused by the Act.

Restricting recovery of Corporate Operations expenses using a method other than actual costs has, in effect, created a proxy for this single category of expense. This contradicts the FCC's assurances that rural LECs will continue to receive support based upon embedded costs until at least January 1, 2001.<sup>12</sup> Additionally, because 1996 expenses have obviously already been incurred, the FCC is imposing this proxy retroactively. This is patently unfair, as it provides small LECs no opportunity to reduce costs to the FCC's "range of reasonableness."<sup>13</sup> In addition, the retroactive reduction in support creates upward pressure on local rates, as the purpose of high-cost loop support is to moderate the impact upon local rates.

Accordingly, the FCC should consider all proxy issues within the context of the established schedule instead of isolating a single category of cost for scrutiny. Retroactively restricting recovery of Corporate Operations expenses based upon outdated expense levels will unnecessarily harm many rural LECs and, ultimately, their customers.

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<sup>10</sup> Universal Service, Local Competition and Access Charge Reform Orders.

<sup>11</sup> MD Docket No. 96-186 at 3.

<sup>12</sup> *Order* at ¶ 203

<sup>13</sup> *Order* at ¶ 284

**IV. Additional Restrictions on Universal Service Support for Exchanges Acquired after May 7, 1997, are Unjustified and Unnecessary.**

The FCC's decision to limit universal service support on acquired exchanges to the same level as before the sale will prevent customers in these exchanges from receiving modern services available to the rest of the nation. We concur with the petitioners who observed this restriction violates Section 254(b) of the Act<sup>14</sup>. The FCC's stated rationale for this restriction, "to discourage LECs from placing undue reliance upon potential support" appears ludicrous upon closer examination and it begs the question as to how anyone could place undue reliance on support mechanisms that have yet to be developed.

Further, this blanket restriction is unnecessary as existing rules can accomplish the FCC's stated objective. Currently, acquiring LECs must obtain study area waivers from the FCC to obtain universal service support. Should the FCC find that the acquisition does not serve the public interest, the waiver and support can be denied.

Finally, because this restriction on acquired exchanges will not be lifted until all LECs are receiving support based upon forward-looking economic methodology,<sup>15</sup> acquired exchanges will be denied support for a minimum of two years they would have otherwise received had they not been sold. For example, rural LECs acquiring and upgrading exchanges from non-rural LECs before January 1, 1999, will be denied the support the non-rural LEC would have received during 1999 and

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<sup>14</sup> Petitions of Rural Telephone Companies at 21, Rural Telephone Coalition at 7, USTA at 7.

<sup>15</sup> *Order* at ¶ 309

2000. At a minimum, acquiring LECs should be entitled to at least the support levels the selling LECs would have received had the transaction not occurred.

**V. Allowing Purchasers of Unbundled Network Elements (UNE) to Receive Universal Service Support Violates the Act.**

Section 214(e) of the Act requires eligible carriers to provide service using some level of their “own” facilities. UNEs are not “owned” facilities, but are merely leased from the incumbent LEC. We concur with petitioners who assert that the FCC has misconstrued the definition of “own facilities” to the detriment of incumbent LECs.<sup>16</sup> Additionally, the Act clearly restricts the use of universal service support payments to “the provision, maintenance and upgrading of facilities and services for which the support is intended”.<sup>17</sup> Obviously, carriers leasing facilities cannot comply with this standard, which restricts support to facilities-based carriers only.

The FCC cites competitive neutrality as the rationale for this decision, however this distorts Joint Board’s interpretation of this principle. The Joint Board was clearly referring to the type of technology used in providing service,<sup>18</sup> not the method by which the provider resells facilities.

**VI. Universal Service Support Should Not be Portable on an Average Per-Line Basis.**

High-cost geographic support areas are not characterized by customers with similar costs, but instead contain both lower cost customers (usually in a small town) and higher cost customers (usually several miles outside the town). Obviously, if equal support is available for both high and

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<sup>16</sup> Petition of Rural Telephone Coalition at 13-17.

<sup>17</sup> Section 254(e)

<sup>18</sup> CC Docket No. 96-45, *Recommended Decision* ¶ 155

low cost customers, competitors will target the lower cost customers. The FCC cites ease of administration as the reason for making support portable on an average per-line basis.<sup>19</sup> If the FCC believes portable support is necessary to ensure competition, it should at least ensure that it is targeted to the correct customers.<sup>20</sup> Rural LECs will suffer irreversible harm when competitors “creme skim” customers. The FCC should not provide this opportunity cavalierly on the grounds of administrative ease.

**VII. States Should Not be Allowed to Submit Forward-Looking Economic Cost Determinations Which Reduce the Authorized Federal Rate-of-Return.<sup>21</sup>**

The FCC clearly concludes that the current federal rate-of-return is reasonable.<sup>22</sup> By correctly recognizing that increased competition increases risk, which in turn, will increase the cost of capital, the FCC provides significant rationale for increasing the rate-of-return. Accordingly, if states are to be given latitude, it should only be to increase the rate-of-return, not lower it.

**VIII. LECs Should Not be Required to Upgrade Switching Equipment to Provide Toll Limitation Services.**

Several petitioners correctly point out that equal access to long distance providers renders effective toll limitation services technically unfeasible<sup>23</sup>. In addition, alternatives exist which will produce the desired results of toll limitation, that is limited access to long distance calling for low

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<sup>19</sup> *Order* at ¶ 313

<sup>20</sup> Petition of Rural Telephone Coalition at 8.

<sup>21</sup> TCA concurs with Petition of Rural Telephone Coalition at 12.

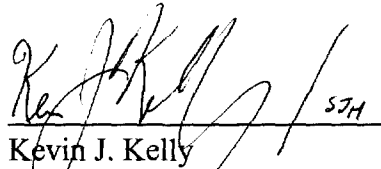
<sup>22</sup> *Order* at ¶ 250

<sup>23</sup> Petitions of USTA at 4-6 and Rural Telephone Coalition at 24.



income customers. By combining toll blocking service with prepaid calling cards, LECs are able to achieve the desired result at much lower cost.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kevin J. Kelly", is written over a horizontal line. To the right of the signature, the initials "SJH" are written.

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August 18, 1997

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 18, 1997, a copy of the foregoing Comments of TCA, Inc. - Telecommunications Consultants ("TCA") was delivered, by first-class mail postage pre-paid to the following:

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